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In the Supreme Court of the United States

CITY OF COLUMBUS, MITCHELL BROWN, and BOBBIE BEAVERS,

Petitioners,

v.

OURS GARAGE AND WRECKER SERVICE, INC., and THE TOWING AND RECOVERY ASSOCIATION OF OHIO,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC. AND THE CALIFORNIA TRUCKING ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

The question as stated by petitioners is whether political subdivisions have the authority to regulate tow truck safety under 49 U.S.C. § 14501(c)(2)(A). But Section 14501 is not a statute solely about tow trucks. Rather, it covers the motor carrier industry as a whole, broadly preempting trucking regulations by States, political subdivisions, and political authorities of 2 or more states subject to a specially enumerated exception for "the safety regulatory authority of a State with respect to motor vehicles." Accordingly, the question actually presented by this case is whether Section 14501's preservation of limited safety regulatory authority of States, as part of a systematic program of motor carrier deregulation, affords political subdivisions and other non-State governmental entities power to regulate trucks and trucking.

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BRIEF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC. AND THE CALIFORNIA TRUCKING ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF THE *AMICI CURIAE*[1]

The American Trucking Associations, Inc. ("ATA") is a trade association of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA represents over 30,000 companies and every type and class of motor carrier operation in the United States, including tens of thousands of for-hire carriers, private carriers, leasing companies, and trucking suppliers. ATA regularly advocates the trucking industry's common interests before this Court and other courts. ATA and its members have a strong interest in motor carrier regulations generally and more particularly in matters relating to truck safety such as the statutory provision at issue in this case. *See* 49 U.S.C. § 14501(c)(2)(A). Moreover, ATA has special familiarity with the matters raised in this case because it actively participated in the formulation of federal motor carrier deregulation policy and helped shape Congress's decision to allow limited regulatory protection for non-economic factors such as truck safety. *See* H.R. REP. NO. 677, 103d Cong., 2d Sess., at 88 (1994).

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[1] Pursuant to Rule 37.6, *amici* certify that no counsel for a party authored this brief in whole or in part, and that no person or entity, other than *amici*, their members, or their counsel have made a monetary contribution to this brief's preparation or submission.

Letters from the parties consenting to the filing of this *amicus* brief have been lodged with the Clerk of the Court.

The California Trucking Association ("CTA") is the state trade association representing motor carriers and their suppliers in California. CTA is a member organization of ATA that, like all state trucking associations, is independently governed and has its own membership. The 2,500 member companies of CTA cover all aspects of the trucking industry and include both intrastate and interstate motor carriers. CTA's members have long experience with burdensome local permit requirements, licensing fees, and franchise taxes imposed by California municipalities.

Section 14501 on its face preempts states, political subdivisions of states, and political authorities of two or more states from imposing regulations that relate to the prices, routes, or services of motor carriers, except in certain limited circumstances that Congress expressly identified. The court below — like the Fifth, Ninth, and Eleventh Circuits and an array of lower federal and state courts — chose to take Congress at its word and, consistent with the history of motor carrier regulation generally and the legislative history of Section 14501 in particular, declined to expand the spheres of permissible state and local regulation beyond what Congress authorized. Petitioners, seeking to escape this limitation on their regulatory authority over motor carriers, ask this Court to rewrite Section 14501 to grant each and every municipality the authority to impose on motor carriers its preferred size and weight restrictions for trucks and cargo, insurance requirements, bond requirements, and the like, thus licensing a patchwork system of local regulation that Congress has labored for well over half a century to prevent.

The issue in this case thus has substantial significance to *amici*'s members, who put thousands of trucks on the road every day of the year. For example, the decisions of the Ninth Circuit in *Tocher* v. *City of Santa Ana*, 219 F.3d 1040, 1051 (9th Cir. 2000), *cert. denied*, 531 U.S. 1146 (2001), and of the district court in *California Dump Truck Owners Association* v.

Davis, 172 F. Supp. 2d 1298, 1302-1303 (E.D. Cal. 2001), currently provide California truckers with the only meaningful protection against enforcement of administratively and financially burdensome local tax and permit requirements, which communities often couch in the language of safety regulation but in fact employ to further goals of economic protectionism and revenue raising. If, as petitioners request, the reasoning of the Fifth, Sixth, Ninth, and Eleventh Circuits is rejected and the will of Congress is frustrated, not only will the ability of motor carriers to conduct business in multiple jurisdictions be inhibited, but the power of the federal government and the states to impose uniform safety standards and other trucking regulations will be undermined.

Amici seek to inform the Court of the importance of the issues raised by the petition, and in particular the deleterious effect on the trucking industry that will result if the decision below is not upheld.

SUMMARY OF THE ARGUMENT

Section 14501 is not solely — or even principally — concerned with tow-trucks. Instead, Congress enacted it as part of a systematic effort to free the motor carrier industry as a whole from stifling economic regulation (while leaving unhindered the ongoing efforts of the federal government to achieve uniform and effective truck safety standards).

The statute broadly preempts ***States and political subdivisions*** from regulating motor carriers but sets aside spheres in which ***States*** may exercise limited regulatory authority. The only way for petitioners to escape from the plain language of the statute is to claim that Congress could not possibly have meant what it said. But that claim is hollow. Given both the long history of patchwork local regulation interfering with the conduct of interstate commerce and the express legislative intent to deregulate the motor carrier industry both nationally and locally, it was entirely rational for

Congress to broaden federal preemption over intrastate regulation while affording States alone carefully circumscribed regulatory authority with respect to truck safety.

ARGUMENT

As the Fifth, Sixth, Ninth, and Eleventh Circuits have held, and as respondents persuasively show in their brief, 49 U.S.C. § 14501(c)(2)(A) unambiguously affords States alone an exception to federal preemption for truck safety regulations. Because respondents' brief demonstrates the statute's crystal clarity and responds directly and persuasively to the various statutory arguments raised by petitioners and their *amici*, we will not burden the Court with additional arguments supporting the conclusion that "a plain reading of this provision indicates that municipalities are not included within [the] definition" of "State." *Tocher*, 219 F.3d at 1051; *R. Mayer of Atlanta, Inc.* v. *City of Atlanta*, 158 F.3d 538, 543 (11th Cir. 1998); *California Dump Truck Owners Ass'n*, 172 F. Supp. 2d at 1302-1303. Instead, *amici* will demonstrate that limiting safety regulatory authority to the States was a perfectly rational thing for Congress to do and hence debunk petitioners' suggestion that Congress could not have meant to make that choice.

A. The Rise And Decline Of Motor Carrier Regulation.

In support of their rejection of the plain meaning of the statute, petitioners devote a substantial portion of their brief to describing the history of towing and towing regulation. This case is not solely about tow trucks, however. Instead, it is about the past and future of the motor carrier industry as a whole, and Congress's efforts first to regulate and then to deregulate that industry.

1. The history of American economic development in the Twentieth Century is inextricably intertwined with the growth of the modern motor carrier industry. But the relationship between trucking and trade goes back much farther. Indeed, as

early as the Thirteenth and Fourteenth Centuries, the term "truck," in one spelling or another, came to be associated with the exchange of commodities. *See* THE COMPACT OXFORD ENGLISH DICTIONARY 602-603 (2d ed. 1991). And as long ago as 1611 the term was used to connote a wheeled conveyance. *See ibid.*

The modern motorized truck appeared not long after the advent of the gasoline-powered automobile. It did not find wide acceptance in the United States, however, until its advantages over horse-drawn conveyances were demonstrated during World War I. *See, e.g.*, WILLIAM R. CHILDS, TRUCKING AND THE PUBLIC INTEREST: THE EMERGENCE OF FEDERAL REGULATION 1914-1940, at 1-3, 8-19 (1985). Even then, the lack of good roads and the relative fragility of the early vehicles limited truck service for the most part to intra-city deliveries. *See, e.g.*, William E. Thoms, *Rollin' On . . . To a Free Market: Motor Carrier Regulation 1935-1980*, 13 TRANSP. L.J. 43, 44 (1983); George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 8 (1971).

Passage of the Federal Aid Road Act, Pub. L. No. , 39 Stat. 355 (1916), and the Federal Highway Act of 1921, Pub. L. No. 67-87, 42 Stat. 212, and the imposition of state gasoline taxes went a long way toward correcting these problems, however. Over the course of the next decade, these sources of funding made possible dramatic improvements in the quality of both intra- and inter-city roads. *See* HAROLD G. MOULTON, THE AMERICAN TRANSPORTATION PROBLEM 530-538 (1933). And road improvements, together with technological advances in truck equipment, permitted the trucking industry to develop as a viable competitor to the railways. *See* WILLIAM R. CHILDS, *supra*, at 14. Indeed, by the mid- to late-1920's, motor carriers — with their flexible routes and schedules and ability to deliver small, high-value loads efficiently — were able to draw the most profitable business away from the already ailing railroad industry. *See, e.g.*, LAWRENCE S. ROTHENBERG, REGULATION,

ORGANIZATIONS, AND POLITICS: MOTOR FREIGHT POLICY AT THE INTERSTATE COMMERCE COMMISSION 44 (1994); WILLIAM R. CHILDS, *supra*, at 27-28; Ernest W. Williams, Jr., *The ICC and the Regulation of Intercarrier Competition*, 63 HARV. L. REV. 1289, 1349-1372 (1950); *Report of the Federal Coordinator of Transportation 1933*, S. DOC. NO. 152, 73d Cong., 2d Sess., at 14-18, 35 (1934). *See generally* G. Shorey Peterson, *Motor Carrier Regulation and Its Economic Bases*, 43 Q.J. ECON. 604, 611-612 (1929).

2. In an effort to curb this new competition, the railroads successfully mobilized to attain state regulation of motor carriers, thus effectively reasserting some of their declining monopsonistic power over intercity and interstate shipping. "By the mid-1920s, most states had instituted some form of motor carrier regulation, largely consisting of rules on safety, licensing, insurance, and standards of service." LAWRENCE S. ROTHENBERG, *supra*, at 44; G. Shorey Peterson, *supra*, 43 Q.J. ECON. at 607-608. And these "safety" regulations tended to be particularly stringent when in-state interests benefitted from economic protectionism of the railroads. *See ibid.* ("In particular, those states whose shippers benefited substantially from [the railroads'] value-of-service pricing proved willing to limit motor carriers."); George J. Stigler, *supra*, 2 BELL J. ECON. & MGMT. SCI. at 8 ("Sometimes the participation of the railroads in the regulatory process was incontrovertible: Texas and Louisiana placed a 7000-pound payload limit on trucks serving (and hence competing with) two or more railroad stations, and a 14,000-pound limit on trucks serving only one station (hence, not competing with it).").

Inevitably, the resulting patchwork of state regulations — many taking the form of safety requirements — interfered with the standardization of vehicles and wreaked havoc on the burgeoning motor carrier industry. Indeed, as one commentator has explained:

> Whether direct or indirect, the state laws varied markedly from one state to the next. * * * If a trucker began a trip in Chicago, heading east, he could load a truck and trailer with a total of 39,000 pounds, 20,000 on the truck and 19,000 in the trailer. When he approached the Indiana border, he had to remove 16,000 pounds from the truck and 12,800 pounds from the trailer to meet the Hoosier State's limit of 10,200 pounds. Once in Ohio he could add a total of 7,000 pounds; Pennsylvania allowed an additional 14,000 pounds (to total 31,200). * * *
>
> In addition to the weight restrictions, states imposed different limits on the height, length, and width of commercial vehicles. Pennsylvania allowed heights to 174 inches, but Indiana only 144 inches. Maximum lengths of combination vehicles (tractor and trailer) varied widely, from forty feet in Connecticut, Illinois, and Indiana, to seventy in Pennsylvania and eighty-five in Rhode Island. * * *
>
> State laws imposing license fees and gasoline taxes also created problems for the aspiring interstate truckers. Enforcement of these laws in one state often provoked retaliation in neighboring states. "Border wars" erupted in which highway patrolmen waited just inside the state line to fine out-of-state truckers who failed to have license and gasoline receipts. * * *
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> * * * * *
>
> Whether based upon geographic necessities, public opinion, or railroad lobbying, state laws created problems for those engaged in or associated with the motor carrier business. Local, state, and interstate truckers suffered from increased operating costs, while [truck] manufacturers faced diverse production requirements and a growing used-truck market (caused

in part by the bankruptcies of inexperienced drivers under pressure of the increased costs).

WILLIAM R. CHILDS, *supra*, at 52, 54. In short, "the diversity in state laws was enough to slow the emergence of interstate trucking." *Id.* at 54. *See generally* S. DOC. NO. 152, 73d Cong., 2d Sess., at 188-189, 191, 205-221 (detailing differences among state regulations applicable to interstate carriers).

3. In the latter half of the 1920's and the early 1930's, this Court took the first real steps toward a much needed remedy for this stifling system of complicated and often conflicting state regulations. The Court's initial foray into matters of state regulation of trucking began with *Michigan Public Utilities Commission* v. *Duke*, 266 U.S. 570 (1925). *Duke* involved a challenge to a Michigan statute that both converted private motor carriers of property into common carriers and conditioned truckers' rights to use the state's highways on their acquisition of a certificate of public convenience and necessity (which in turn depended, among other things, on payment of a fee and satisfaction of an indemnity bond requirement). *See id.* at 574. The Court reasoned that, "in the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles," as long as those regulations are neither unreasonable nor unduly burdensome. *Id.* at 576. The Court nonetheless explained that "it is well settled that a state has no power to fetter the right to carry on interstate commerce within its borders by the imposition of conditions or regulations which are unnecessary and pass beyond the bounds of what is reasonable and suitable for the proper exercise of its powers in the field that belongs to it." *Id.* at 577. Accordingly, because the Michigan statute had "no relation to public safety or order in the use of motor vehicles upon the highways, or to the collection of

compensation for the use of the highways" (*ibid.*), the Court held that the statute violated the Commerce Clause.[2]

The Court reached a similar conclusion in *Buck* v. *Kuykendall*, 267 U.S. 307 (1925). In *Buck*, the Court struck down a Washington statute requiring motor carriers to obtain certificates of public convenience and necessity, reasoning that the Commerce Clause limits a state's ability to regulate motor vehicles to the imposition of reasonable requirements that are necessary to promote safety and conserve the state's highways, and that anything beyond such indirect burdens on commerce is impermissible.[3] *See id.* at 315-316; *see also Smith* v. *Cahoon*, 283 U.S. 553, 562-563 (1931) ("regulation of the business of a private carrier * * * is manifestly beyond the power of the state"); *George W. Bush & Sons Co.* v. *Maloy*, 267 U.S. 317 (1925) (striking down Maryland common carrier permit requirement both under Commerce Clause and because statute was inconsistent with congressional intent that state highways be open to interstate commerce). And in *Frost* v. *Railroad Commission*, 271 U.S. 583 (1926), the Court struck down, *inter alia*, a statute requiring private carriers to obtain permits from municipalities, thereby making clear that the limits on state

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[2] The Court also held that the conversion of private motor carriers into common carriers constituted a taking of private property barred by the Due Process Clause of the Fourteenth Amendment. *See id.* at 577-578.

[3] The Court held that the statute unreasonably burdened interstate commerce and encroached on the exclusive legislative authority of Congress over the dissent of Justice McReynolds, who argued — as petitioners do in the instant case — that the problems necessitating highway use restrictions and other such regulations "are essentially local" and that "[t]he federal government has not and cannot undertake precise regulation." *See George W. Bush & Sons Co.* v. *Maloy*, 267 U.S. 317, 325 (1925) (McReynolds, J., dissenting) (dissent to companion cases of *Buck* and *Bush*).

regulatory authority recognized in *Duke* extended also to political subdivisions.

In many instances, however, states and localities simply flouted the Court's rulings and continued to regulate motor carriers by virtually the same means that the Court had repeatedly rejected. *See, e.g.*, David E. Lilienthal & Irwin S. Rosenbaum, *Motor Carriers and the State: A Study in Contemporary Public Utility Legislation*, 2 J. LAND & PUB. UTIL. ECON. 257, 259-262 (July 1926) (governor of Maryland interpreted *Bush* narrowly as not interfering with state licensing, weight, and height requirements; Washington continued to require truckers to obtain certificates to use roads, albeit without requiring proof of public convenience and necessity). Yet largely in response to *Duke* and its progeny, the railroads and others favoring motor carrier regulation redirected their efforts to the national arena. *See, e.g.*, G. Shorey Peterson, *supra*, 43 Q.J. ECON. at 605-606. Indeed, the day after *Buck* was decided, the first proposal for federal motor carrier regulation was introduced in Congress, thus moving the industry one step closer toward uniform national regulation.[4]

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[4] In 1932, the Court's position shifted somewhat, becoming more tolerant of state regulation. *Stephenson* v. *Binford*, 287 U.S. 251 (1932), for example, upheld a state permit requirement for private motor carriers that substantially reproduced the regulatory scheme struck down in *Duke* and *Bush*. *See id.* at 265-266. And *Sproles* v. *Binford*, 286 U.S. 374 (1932), approved the imposition by a state of maximum truck length requirements and load limits. Moreover, the *Sproles* Court justified that result in part using *Duke*'s rationale that, absent federal action, safety and highway conservation are valid state legislative objectives. *See id.* at 390 ("'In the absence of national legislation especially covering the subject of interstate commerce, the state may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens'"; "in matters admitting of diversity of treatment, according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act") (quoting *Morris* v. *Duby*, 274 U.S. 135, 143 (1927); citing *Minnesota Rate Cases*, 230 U.S. 352, 399-400 (1913)). Whether because the more permissive application of this principle came too late to reverse the trend or because the inefficiencies and other disadvantages of local regulation had already been exposed, however, these decisions did not alter the federal focus of pro-regulation interests.

See LAWRENCE S. ROTHENBERG, *supra*, at 45; *see also* S. DOC. NO. 152, 73d Cong., 2d Sess., at 24-25, 33 (noting role of railroads in proposing federal motor carrier regulation following decisions in *Buck* and *Bush*).

4. The efforts to obtain federal regulation finally began to bear fruit under the Administration of Franklin Delano Roosevelt, who had made rescue of the railroads from their dire financial straits a prime element of his first Presidential campaign. *See* LAWRENCE S. ROTHENBERG, *supra*, at 48. The Roosevelt Administration initially pursued both direct government regulation and cooperative industry self-regulation. In this regard, the Emergency Railroad Transportation Act of 1933, Pub. L. No. 73-68, 48 Stat. 211, authorized the creation of the Office of the Federal Coordinator of Transportation. And the new Coordinator — ICC member Joseph Eastman — would come to spearhead the move toward formal regulation of the motor carrier industry. *See generally* S. DOC. NO. 152, 73d Cong., 2d Sess., *supra*. At the same time, the National Industrial Recovery Act ("NIRA"), Pub. L. No. 73-67, 48 Stat 195 (1933), created the National Recovery Administration ("NRA") and authorized it, among other things, to erect a system of private controls over trucking.

Under ATA's leadership, the motor carrier industry worked with the NRA to propound an industry-wide "code of fair competition" and to institute a National Code Authority and State Code Authorities to administer and enforce that code. *See* LAWRENCE S. ROTHENBERG, *supra*, at 49; WILLIAM R. CHILDS,

supra, at 106-115; *see also* S. DOC. NO. 152, 73d Cong., 2d Sess., at 27, 29. By early 1935, however, it had become clear to both ATA and the Federal Coordinator of Transportation that attempts at industry self-regulation would be unworkable absent meaningful federal support (*see* WILLIAM R. CHILDS, *supra*, at 117), including price controls (*see* LAWRENCE S. ROTHENBERG, *supra*, at 49). The final blow to industry self-regulation came in the form of the decision in *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935), in which the Court struck down the NIRA.

Together, these events left systematic federal regulation the only viable option to coordinate the trucking industry and hence set the stage for passage of the Motor Carrier Act of 1935 ("1935 MCA"), Pub. L. No. 74-255, 49 Stat. 543. The 1935 MCA made comprehensive regulation possible by bringing interstate trucking under the auspices of the Interstate Commerce Commission ("ICC"). It invested the ICC with authority to regulate motor carriers and drivers engaged in interstate commerce by, among other things, approving trucking routes, setting tariff rates, and imposing surety bond and insurance requirements. *See id.* §§ 204, 215-218. It also gave the ICC authority to issue operating permits and certificates of public convenience and necessity, and prohibited motor carriers from engaging in interstate commerce without such licenses. *See id.* §§ 206-210, 212.[5]

The 1935 MCA remained virtually unchanged for some 45 years. During that time, the ICC exerted broad regulatory control over, among other things, motor carrier rates, routes, and services, while Congress increasingly imposed and authorized the implementation of uniform national safety

[5] The 1935 MCA did, however, include a "grandfather clause" that directed the ICC to issue operating permits automatically, upon timely application, to motor carriers already engaged in interstate commerce prior to the effective date of the Act. *See id.* § 209.

standards for trucks and trucking. *See, e.g.*, National Traffic Motor Vehicle Safety Act, Pub. L. No. 89-563, 80 Stat. 718 (1966) (codified as amended at 49 U.S.C. §§ 30101-30169); 23 U.S.C. § 127 (establishing size and weight limitations for vehicles using interstate highways);[6] Federal Motor Vehicle Safety Standards, 49 C.F.R. part 571. Yet despite increasingly comprehensive federal regulation of virtually every aspect of the motor carrier industry — and especially of truck safety — states continued to assert authority over trucks and trucking, thus often frustrating Congress's goal of achieving uniformity and predictability of motor carrier regulations. Indeed, this continuing parochialism and the havoc it wreaked on interstate commerce necessitated the intervention of this Court on multiple occasions. *See, e.g.*, *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. 662 (1981) (invalidating law barring use of trucks longer than 60 feet on Iowa's interstate highways); *Raymond Motor Transp., Inc.* v. *Rice*, 434 U.S. 429 (1978) (striking down Wisconsin regulations barring from the state's highways trucks longer than 55 feet); *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) (striking down Illinois statute requiring special mudguards on trucks because requirement unduly burdened interstate commerce).[7]

[6] Federal highway vehicle weight restrictions were established initially in 1958 (*see* Pub. L. No. 85-767, § 127, 72 Stat. 885 (1958)), and have been revised periodically to reflect innovations in truck design and safety equipment as well as other technological developments. *See, e.g.*, Pub. L. No. 86-624, § 17(e), 74 Stat. 416 (1960); Pub. L. No. 93-643, § 106, 88 Stat. 2283 (1975); Pub. L. No. 94-280, § 120, 90 Stat. 438 (1976); Pub. L. No. 97-424, § 133, 96 Stat. 2123 (1983); Pub. L. No. 100-17, §§ 133(a)(3), 119, 101 Stat. 157; Pub. L. No. 100-202, § 101(l), 101 Stat. 1329 (1987).

[7] Petitioners incorrectly suggest that *H.P. Welch Co.* v. *New Hampshire*, 306 U.S. 79 (1939), and *Maurer* v. *Hamilton*, 309 U.S. 598 (1940), demonstrate this Court's recognition and approval of municipal regulation. Both *Welch* and *Maurer* dealt with regulations

5. By the mid- to late-1970's, increasingly widespread recognition of the need to deregulate motor carriers and thereby to increase competition had resulted in the ICC's exercise of its rulemaking authority to relax the restrictions on the industry. *See, e.g.*, Fritz R. Kahn, *Motor Carrier Regulatory Reform — Fait Accompli*, 19 TRANSP. J. 5, 7-9 (1979). With the passage of the Motor Carrier Act of 1980 ("1980 MCA"), Pub. L. No. 96-296, 94 Stat. 793, such measures were given congressional imprimatur and the stage was set for broader economic deregulation that eventually would extend also to intrastate motor carrier services. *See, e.g.*, Federal Aviation Administration Authorization Act of 1994 ("FAA Authorization Act"), Pub. L. No. 103-305, 108 Stat. 1569.

The same understanding about the need for deregulation resulted in the passage of the Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705, which among other things eased restrictions on the air carrier industry. In order to ensure the success of this deregulatory effort, Congress included federal preemption provisions providing that "no State or

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imposed by state legislatures, and the Court's use of the term "local" to distinguish them from "federal" legislation is hardly authority for the proposition that municipal regulation of trucking has ever been deemed permissible, much less that Congress in 1994 intended to extend such power over interstate commerce to municipalities. Thus, although in *Welch* the Court speaks of "local supervision" (*see* 306 U.S. at 84), it is plain that what the Court had in mind was regulation at the state level. *See id.* at 84-85 (holding that "[t]he roads belong to the ***State***," and hence that, in absence of evidence of clear legislative intent, "it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a ***state***") (emphasis added). Similarly, in *Maurer*, the Court's discussion of whether Congress intended to displace "local laws" with the passage of the 1935 MCA (306 U.S. at 614) was clearly directed to the question of the extent and limits of "***state*** power" (*id.* at 616) and in no sense implicated any issue of the scope of permissible municipal regulation.

political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier * * *." *Id.* § 4(a). At the same time, the preemption provisions preserved the "authority of any State or political subdivision thereof or any interstate agency or other political agency of two or more States as the owner or operator of an airport served by any air carrier certificated by the Board to exercise its proprietary powers and rights" (*ibid.*), and provided that when any intrastate air carrier "regulated by a State" received authority to engage in interstate operations, the authority it had previously received from that state would be made part of its authority from the federal agency that would now take over the task of regulating it (*ibid.*).

At the same time that Congress was deregulating the motor carrier and air carrier industries, it took steps to ensure that truck safety was not compromised. First, it created the Motor Carrier Safety Assistance Program as part of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2097. This legislation authorized the Department of Transportation ("DOT") to provide grants to states for development of programs to extend federal truck safety standards to intrastate motor carriers, thus furthering the historic goal of uniformity of safety regulations. *See* 49 U.S.C. §§ 31102-31104.

Two years later, Congress passed Public Law No. 98-554, 98 Stat. 2832, which dramatically expanded the scope of federal truck safety regulation. Title II of that statute — the Motor Carrier Safety Act of 1984 — directs the Secretary of Transportation to establish minimum federal safety standards for commercial motor vehicles. *See id.* § 206. It then directs "[a]ny State which enacts, adopts, issues, or has in effect any law or regulation pertaining to commercial motor vehicle safety" to submit such law or regulation to the Department of

Transportation ("DOT") for approval. *See id.* § 207. The Act provides for broad federal preemption of such statutes or regulations if the DOT determines that they (1) are less stringent than the federal safety requirements, (2) are incompatible with DOT safety regulations, (3) unreasonably burden interstate commerce, or (4) yield no safety benefits.[8] *See id.* § 208(c). In short, inconsistent state safety laws having interfered with interstate commerce since the 1920's, Congress consolidated in the hands of the DOT the authority to preserve uniform nationwide safety standards.

In setting forth this comprehensive truck safety scheme, moreover, Congress further clarified that the distinction it had wrought in the Airline Deregulation Act between the carrier safety regulatory authority of States and that of States and political subdivisions (*see* 49 U.S.C. § 31132(7)) was intentional. Specifically, it provided that the term "'State' means a State of the United States, the District of Columbia, and, ***in sections 31136 and 31140-31142 of this title***, a political subdivision of a State." 49 U.S.C. § 31132(7) (emphasis added). This reflects Congress's awareness that the term "State" does not ordinarily mean "State and its subdivisions" and that when it intended motor carrier legislation to apply to States and their subdivisions it said so expressly.[9]

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[8] Title I — the Tandom Truck Safety Act of 1984 — similarly reconfirms federal authority to regulate motor carrier safety. While the Act affords state governors the opportunity to request exemptions from federal statutory truck length and width requirements for portions of the interstate highway system determined to be incapable of safely accommodating otherwise lawful vehicles, it invests the DOT with discretion to grant or deny such gubernatorial requests (or to grant such exemptions on the agency's own initiative). *See id.* §§102-103.

[9] This language also serves to distinguish the motor carrier statutes from the Federal Insecticide, Fungicide, and Rodenticide Act

With the history of the motor carrier industry — including the development first of dysfunctional state regulation and subsequently of coordinated federal oversight — serving as a backdrop, Congress in the 1980's and 1990's recognized that regulatory frameworks "introduced in the 1930's when trucking was a new and struggling industry, ha[d] outlived all usefulness." S. REP. NO. 176, 104th Cong., 1st Sess., at 10 (1995). Accordingly, it proceeded with a series of measures to deregulate the trucking industry that ultimately led to passage of Section 14501 in its present form.

6. Thus, the stage was set for passage of Section 14501 by federal deregulation of air carriers (and federal preemption of state and local regulation) in the Airline Deregulation Act, loosening of ICC control over the motor carrier industry in the 1980 MCA, the extension of uniform federal safety standards to intrastate trucking through the Motor Carrier Safety Assistance Program, and reaffirmance and solidification of federal control over interstate motor carrier safety through the Motor Carrier Safety Act and the Tandem Truck Safety Act. Congress's next significant step in scaling back the regulatory

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("FIFRA") construed by this Court in *Wisconsin Public Intervenor* v. *Mortier*, 501 U.S. 597 (1991). In *Mortier*, the Court held that the fact that FIFRA's definition of "State" does not include political subdivisions is not a sufficient basis for concluding that Congress intended to preempt pesticide regulation by political subdivisions. *Id.* at 607-609. In the Court's view, the statute "plainly authorizes the 'States' to regulate pesticides and just as plainly is silent with reference to local governments." *Id.* at 607. The same is not true of the motor carrier statutes. As indicated above, the definitional section of the Motor Carrier Safety Act of 1984 draws an explicit distinction between "States" on the one hand and "States and their political subdivisions" on the other hand. And both the Airline Deregulation Act and the FAA Authorization Act refer to States in some places and States and their subdivisions in other places ***within the very same section.*** They thus plainly are not "silent with reference to local goverments."

structures in which the motor carrier industry had been mired was passage of the Surface Freight Forwarder Deregulation Act of 1986 ("SFFDA"), Pub. L. No. 99-521, 100 Stat. 2993. That Act "remove[d] the power of the ICC to prescribe rates, rules, classifications and practices of freight forwarders involved in both intrastate and interstate commerce," while at the same time "prevent[ing] states and other local governments from exercising regulatory authority over areas of interstate commerce * * * being vacated by the Interstate Commerce Commission * * *." 131 CONG. REC. S6073 (daily ed. May 14, 1985) (statement of Sen. Packwood) (section-by-section analysis of S. 1124).[10] In other words, it afforded freight forwarders the freedom to coordinate rates and services with the deregulated rail and motor carriers who would perform the actual carriage operations. *See* 132 CONG. REC. H8749 (daily ed. Sept. 30, 1986) (statement of Rep. Shuster).

Like the Airline Deregulation Act, the SFFDA furthered Congress's desire to replace governmental control with free market competition by prohibiting states and local governments from stepping in to reimpose regulations on the industry once federal oversight had been withdrawn. *See, e.g.*, 131 CONG. REC. S6073 (statement of Sen. Packwood) (explaining that "[t]his subsection is intended to prevent states and other local governments from exercising regulatory authority over areas of interstate commerce that are being vacated by the Interstate Commerce Commission"). Precisely reproducing the language of the preemption provision for air carriers (*see* Airline Deregulation Act § 4(a)), it provided that "no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force

[10] Freight forwarders are essentially brokers who consolidate and coordinate shipments of goods. *See, e.g.*, *Chicago, Milwaukee, St. Paul & Pac. R.R. Co.* v. *Acme Fast Freight, Inc.*, 336 U.S. 465, 467, 484 (1949).

and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder." *See* Pub. L. No. 99-521, § 11(g)(1) (codified at 49 U.S.C. § 11501 (1994)).

Then, in 1994, Congress revisited the issue of motor carrier deregulation, this time to address matters of intrastate regulation as well as inequities between air carriers and freight forwarders (who were afforded federal preemption protection) on the one hand, and motor carriers (who were not) on the other. The result was that Congress amended the preemption provisions of the Surface Freight Forwarder Deregulation Act to encompass motor carriers of property and place them on an equal footing with air carriers. *See* FAA Authorization Act § 601.[11]

According to the Conference Committee report, Section 601 of the FAA Authorization Act was intended to preempt a "patchwork" of intrastate motor carrier regulations in 41 states that placed intolerable burdens on interstate commerce by causing "significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtail[ing] the expansion of markets." H.R. REP. NO. 677, 103d Cong., 2d Sess., at 87; *see also* H.R. REP. NO. 311, 104th Cong., 1st Sess., at 92 (1995) (summarizing purposes of preemption provisions of FAA Authorization Act); *Tocher*, 219 F.3d at 1048; *Mayer*, 158 F.3d at 546. As Congress forthrightly explained, "[t]he sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to

[11] Subsequently, in 1998, Congress further amended Section 14501 to extend federal preemption to motor carriers of passengers, once again incorporating the precise language of the Airline Deregulation Act and the SFFDA, as well as the safety regulatory authority exception of the ICC Termination Act. *See* Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, § 1206(b), 112 Stat. 107 (1998) (codified at 49 U.S.C. § 14501(a); *see also* H.R. REP. NO. 550, 105th Cong., 2d Sess., at 496 (1998) (explaining Conference Committee's decision to include "clarifying provision * * * to ensure that states may continue to regulate safety").

conduct a standard way of doing business." H.R. REP. NO. 677, 103d Cong., 2d Sess., at 87.

More broadly, Section 601 was intended "to create consistency with the [Airline Deregulation Act] preemption provision." *Id.* at 83. Indeed, the Conference Committee explained that "[t]he central purpose of this legislation is to extend to all affected carriers, air carriers and carriers affiliated with direct air carriers through common controlling ownership on the one hand and motor carriers on the other, the identical intrastate preemption of prices, routes and services as that originally contained in" the Airline Deregulation Act.[12] *Ibid.* To this end, the Committee explained that:

> The preemption provision * * * is identical to the preemption provision deregulating air carriers and carriers affiliated with a direct air carrier through common controlling ownership and is intended to function in the exact same manner with respect to its preemptive effects. The intention is to create a

[12] More concretely, the purpose of the legislation was "as completely as possible [to] level the playing field between air carriers on the one hand and motor carriers on the other." *Id.* at 82. This change was especially crucial because the ruling in *Federal Express Corp.* v. *California Public Utilities Commission*, 936 F.2d 1075 (9th Cir. 1991), resulted in inequitable burdens that placed some motor carriers at a "competitive disadvantage" with respect to their air carrier counterparts. H.R. REP. NO. 677, 103d Cong., 2d Sess., at 87. In that case, the Ninth Circuit held that the preemption provisions of the Airline Deregulation Act freed the courier service Federal Express from California state motor carrier regulations because the company is formally organized as an "air carrier," even though some of its operations involved purely intrastate trucking. By contrast, federal preemption did not extend to companies such as United Parcel Service ("UPS") because they happened to be organized as "motor carriers," even though they were engaged in precisely the same business as Federal Express. *See id.* at 87.

> completely level playing field between air carriers and carriers affiliated with a direct air carrier through common controlling ownership on the one hand and motor carriers on the other.

Id. at 85. It was in the context of this statutory scheme and the broader objective of industry deregulation that Congress enacted the exception to federal preemption that is the subject of the instant case. *See* FAA Authorization Act § 601(h) (codified at 49 U.S.C. 14501(c)(2)(A)).[13]

B. In Enacting Section 14501(c)(2)(A), Congress Had Good Reason To Distinguish Between States And Political Subdivisions.

Congress's explicit choice to preempt state and local regulation of motor carrier rates, routes, and services while at the same time granting limited safety regulatory authority to the States (subject to the approval of the DOT) was a perfectly logical and appropriate means to deal with problems of inconsistent regulation that had plagued trucking and burdened interstate commerce since the birth of the motor carrier industry.

As explained above, Congress, the ICC, and this Court first recognized more than half a century ago that a hodge-podge of local motor carrier regulations harms not only the trucking industry but interstate commerce generally. That conclusion is no less valid today. Indeed, this Court has witnessed firsthand

[13] That exception provides that the preemption provisions "shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization * * *." *Ibid.*

the deleterious effects on interstate commerce that flow from non-uniform ***state*** regulation, whether undertaken for the purpose of promoting safety or for protectionist reasons. *See Kassel*, *supra*; *Raymond*, *supra*; *Bibb*, *supra*. Just as in the 1920's, so today do truck size and weight limitations, route restrictions, safety device requirements, bond and insurance provisions, and the like substantially burden commerce. And if permitted to vary from town to town and county to county, they can make it impractical if not impossible for carriers to conduct business in multiple jurisdictions.

Consider, for example, the situation of a nationwide motor carrier that conducts operations in communities throughout the country. Even if state and local regulations never came into direct conflict with one another — a wildly implausible assumption (*see, e.g.*, *Bibb*, 359 U.S. at 527 (Illinois and Arkansas mudguard requirements were irreconcilable); WILLIAM R. CHILDS, *supra*, at 52-54 (describing consequences of differing state size and weight requirements for trucks)) — for such a carrier to keep current on all of the individual municipal ordinances applicable to its trucking operations would be a Herculean task. And to monitor compliance with respect to each and every vehicle in the company's fleet as it passes through multiple political subdivisions in the course of a single day's work picking up and delivering parcels would be prohibitively expensive and administratively overwhelming. To say the least, "[t]he sheer diversity of these regulatory schemes [would be] a huge problem for national and regional carriers attempting to conduct a standard way of doing business." H.R. REP. NO. 677, 103d Cong., 2d Sess., at 87. If Congress could conclude that dire results flowed from only 41 separate regulatory schemes (*see id.* at 86), then the problems would take on epic proportions if independent regulatory authority devolved to each and every locality across the country. And for that reason alone, it was not just understandable, but

affirmatively good policy, for Congress to seek to minimize the hardships on carriers by limiting such authority to the States.

Furthermore, Congress plainly was cognizant of the danger that States might use their authority over vehicle safety "as a guise for continued economic regulation as it relates to prices, routes or services." *See id.* at 84. That concern is unsurprising, for Congress well knew that supposed safety regulations have historically been, and still to this day are, employed in pursuit of economic protectionism and revenue raising. *See* pages 6-10, *supra*; pages 25-27, *infra*.

The legislative determination to limit safety regulatory authority to States and not to extend it to political subdivisions or other local governmental units is thus entirely understandable in light of these overriding concerns. For as the Ninth Circuit concluded in *Tocher*, "[a]llowing both states and municipalities to escape preemption under the guise of regulating safety could lead to widespread, diverse regulation of motor carriers, precisely what Congress sought to avoid in promulgating a broad preemption statute." 219 F.3d at 1051; *see also Mayer*, 158 F.3d at 546. That is true in part, moreover, because the DOT would be unable to fulfill its statutory duty to oversee local (*i.e.*, state-level) regulation and thereby maintain uniform safety standards nationwide (*see, e.g.*, 49 U.S.C. §§ 31104, 31136, 31141) if it were forced to review and rule on the propriety of every supposed safety ordinance that each county and village in the nation might see fit to enact. Rather than permit the DOT to be overwhelmed by these oversight duties, Congress effectively reduced the number of potential demands on the agency so that it could adequately fulfill its role as guarantor of uniform safety standards.[14]

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[14] Indeed, Congress's recognition only one year after passage of the motor carrier preemption provisions of a special need to reinstate a narrow sphere of municipal regulation — that concerning rates for non-consensual towing — underscores these conclusions. *See*

In short, the history of patchwork regulation of the motor

Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (codified at 49 U.S.C. § 14501(c)(2)(C)) (federal preemption "does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck * * *"). When Congress amended Section 14501 to add the tow truck exception, it undoubtedly recognized the unique role that municipal regulation had always played with respect to the towing industry, as petitioners have ably recounted (*see* Brief for Petitioners at 2-8) as well as the special relationship between towing services and municipal authorities that order non-consensual tows. Far from supporting a reading of Section 14501(c)(2)(A) that would broadly license political subdivisions to impose safety regulations on tow trucks (or any other sorts of motor carriers), the amendment instead "correct[ed] a serious problem" unique to the towing industry that had been an "unintended consequence" of the extension of virtually complete federal preemption of local motor carrier regulation. *See* S. REP. NO. 176, 104th Cong., 1st Sess., at 10 (1995); Press Release, U.S. Senate Comm. on Commerce, Science & Transp., *Senate Passes Pressler's ICC-FMC 'Sunset' Bill* (Nov. 29, 1995) (reporting remarks of Sen. Pressler, sponsor of S. 1396, upon introduction of bill).

The amendment recognized that, while preemption is the normal rule, in the special circumstance of non-consensual towing (which typically is ordered by local law enforcement agents) regulation by local governing authorities remained necessary to protect the public from "exorbitant prices and unreasonable conditions * * *." S. Rep. 176, 104th Cong., 1st Sess., at 48. Under such circumstances, Congress did not hesitate to provide unambiguous authorization of local ordinances as well as state laws. *See* 49 U.S.C. § 14501(c)(2)(C) (expressly preserving "the authority of a State or a political subdivision of a State"). In other words, Congress was quite capable of recognizing the peculiar case in which municipal regulation was in the public interest and did not burden interstate commerce or interfere with the systematic deregulation of the motor carrier industry. And it was quite capable of clearly stating its intention to leave local regulatory authority in that area undisturbed.

carrier industry and its harmful effects on commerce was as well known to Congress when it passed Section 14501(c)(2)(A) as it is to this Court. It follows that the express choice to reserve some safety regulatory authority for the States without affording it also to political subdivisions was entirely sensible and cannot be dismissed as a mere statutory ambiguity.

C. Failure To Apply Section 14501(c)(2)(A) As Written Will Harm The Motor Carrier Industry And Inhibit Interstate Commerce.

Nor are the dangers of petitioners' proffered reading of the statute merely hypothetical. On the contrary, "safety" regulation by municipalities and other political subdivisions is alive and well, and is a continuing threat to the motor carrier industry as well as a substantial burden on commerce.

In the experience of *amici* and their members, cities, counties, and other local governments across the country impose and enforce myriad licensing and permit requirements, franchise taxes, bond requirements, size and weight restrictions, and similar controls. Though frequently couched in terms of safety concerns, the real purpose of these measures is very often to raise revenue and/or protect local interests from out-of-town or out-of-state competition.

Because their trucks may traverse a dozen or more local jurisdictions in a single day even when making only "local" deliveries, *amici*'s members frequently find themselves subject to duplicative, conflicting, or otherwise abusive regulations. In *amici*'s experience, for example, many carriers have had trucks impounded for failure to pay local taxes that they never knew they owed, by political subdivisions whose jurisdictions they may not even have realized they had entered. Similarly, carriers routinely experience selective enforcement of local ordinances, a hardship to the truckers as well as a clear violation of the Due Process, Equal Protection, and Commerce Clauses. And the

risks are, of course, compounded exponentially for regional or nationwide carriers.

A few recent encounters of *amici*'s members with local regulators and law enforcement officials will serve to highlight the logic of Congress's decision to preempt motor carrier regulation by political subdivisions. In one case, a trucking firm carrying construction materials to an approved building site in the City of Orange, California was informed by municipal officials that it would have to purchase permits — at a cost of some $70,000 — if it wished to operate its trucks over the city streets. And without those permits, the carrier would be prohibited from meeting its contractual obligation to deliver the materials to the job site. Notwithstanding that the carrier's trucks complied with all applicable size and weight restrictions and that trucks regularly serving a local grocery warehouse and a service station used the same roads without being assessed fees or imposing undue safety risks, the city sought to enforce its permit requirement selectively against the out-of-town carrier. Whether designed to eke extra revenues from out-of-town truckers or to hoard motor carriage business for local firms, the permit requirement constituted a substantial threat to the carrier's ability to conduct operations (and one that was overcome only when the carrier invoked the decisions in *Tocher*, *supra*, and *California Dump Truck Owners Association*, *supra*). In another instance, a carrier recently discovered that the City of Los Angeles and a neighboring county could not agree on whether to require that an "over dimensional" load — *i.e.*, one that is oversized or overweight — be shipped only during the day or instead only at night. Thus, neither political subdivision would issue the carrier a permit to use its streets and the carrier was stuck in its tracks.

These incidents are by no means atypical. On the contrary, in *amici*'s experience, instances of abusive imposition or enforcement of local ordinances under the pretext of safety regulation are legion. Congress in the exercise of its legislative

judgment opted to afford the trucking industry a measure of protection against multiplicative, conflicting, and burdensome local regulations and fees by enacting Section 14501. Petitioners' proffered interpretation of Section 14501(c)(2)(A) would cause Congress's deregulatory agenda to unravel and return the motor carrier industry to 1920's-style patchwork economic regulation, albeit under the guise of safety concerns — a result that Congress neither intended nor desired. Accordingly, that reading should be rejected and the decision of the court below should be affirmed.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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